

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

MARK BAINE, :
 :
Plaintiff, :
 :
vs. : CIVIL ACTION 05-00041-KD-M
 :
CORRECTIONAL MEDICAL SERVICES, :
 :
INC., et al., :
 :
Defendants. :

REPORT AND RECOMMENDATION

Plaintiff, an Alabama prison inmate proceeding pro se and in forma pauperis filed a Complaint under 42 U.S.C. § 1983. This action was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.2(c)(4), and is now before the undersigned on the motion for summary judgment of Defendants, Correctional Medical Services, Inc. ("CMS"), and Charles J. Smith, M.D. (Docs. 16, 18, 24), and Plaintiff's Opposition thereto (Docs. 27, 28, 39). For the reasons stated below, it is recommended that the motion for summary judgment of Defendants CMS and Smith be granted and that Plaintiff's action against these Defendants be dismissed with prejudice.

I. SUMMARY OF FACTUAL ALLEGATIONS

From its review of the record, the Court summarizes the parties' allegations that are material to the issues addressed in this Report and Recommendation. At the time of the incident made the basis of this litigation, Plaintiff was an inmate

incarcerated at the Mobile County Metro Jail ("Metro Jail"). (Doc. 1 at 4). On June 1, 2004, CMS began providing medical services to the inmates at the Metro Jail. (Doc. 1 at 5). Dr. Smith, a psychiatrist under contract with CMS, began providing psychiatric services to the inmates at the Metro Jail. (Id.; Doc. 18 at 1). Prior to June 1, 2004, Plaintiff had been under the psychiatric care of the previous medical services provider for the jail. (Doc. 1 at 5). After the change in providers, Plaintiff's psychiatric medication was discontinued, and he requested to see Dr. Smith. (Id.). Dr. Smith prescribed medication for Plaintiff's depression, but when Plaintiff's "other symptoms" did not abate, he requested to see Dr. Smith again. (Id.). According to Plaintiff, he asked Dr. Smith to give him his previously prescribed medication, but Dr. Smith told him that the only way that he could get that medication was "if [he] was a federal inmate."¹ (Doc. 1 at 5; Doc. 39 at 1). Instead, Dr. Smith prescribed Haldol, which Plaintiff stopped taking after he "lost control of [his] motor skills [and] speech." (Doc. 1 at 5). Plaintiff asked to see Dr. Smith again, and Dr. Smith prescribed "Geodo[n]," which Plaintiff subsequently stopped taking because it "lock[ed] up [his] lower jaw." (Id.; Doc. 39 at 1-2). According to Plaintiff, at that time, Dr. Smith

¹ Plaintiff does not disclose the name of his previously prescribed psychiatric medication.

told him, "[w]ell at least you are in a safe place[;] I suggest that you learn to deal with it." (Doc. 39 at 2). Plaintiff remained in the Metro Jail until August 3, 2006, when he was transferred to Limestone Correctional Facility, where he maintains that he is now receiving the proper psychiatric care. (Id. at 2-3).

II. PROCEDURAL ASPECTS OF THE CASE

On January 21, 2005, Plaintiff filed this § 1983 action in this Court, seeking compensatory and punitive damages for "debilitating and unnecessary mental illness" caused by Defendants' failure to properly treat his mental condition.² (Doc. 1 at 8). On January 27, 2006, and January 30, 2006, Defendants filed their Answer and Special Report, respectively, denying any violation of Plaintiff's constitutional rights and asserting various defenses, including qualified immunity.³

²In his Complaint, which was filed while Plaintiff was still incarcerated in the Metro Jail, Plaintiff also sought injunctive relief, requesting "medication that works." (Doc. 1 at 8). Plaintiff's claim for injunctive relief is now moot. See Spears v. Thigpen, 846 F.2d 1327, 1328 (11th Cir. 1988) ("Absent class certification, an inmate's claim for injunctive and declaratory relief in a § 1983 action fails to present a case or controversy once the inmate has been transferred.") (quoting Wahl v. McIver, 773 F.2d 1169, 1173 (11th Cir. 1985)); McKinnon v. Talladega County, Ala., 745 F.2d 1360, 1363 (11th Cir. 1984) ("The general rule is that a prisoner's transfer or release from a jail moots his individual claim for declaratory and injunctive relief.").

³As private entities, neither CMS nor Dr. Smith is entitled to qualified immunity. See Edwards v. Alabama Dep't of Corrs., 81 F. Supp. 2d 1242, 1254 (M.D. Ala. 2000)(CMS, a private entity contracting with the state to provide medical services to state

(Docs. 16, 18, 24). The Court converted Defendants' Special Report and Answer to a motion for summary judgment on January 30, 2007. (Doc. 38). On March 2, 2006, March 8, 2006, and February 15, 2007, Plaintiff filed responses to the Answer and Special Report, reasserting his denial of medical care claim against Defendants. (Docs. 27, 28, 39). These motions are now before the Court.

III. SUMMARY JUDGMENT STANDARD

In analyzing the propriety of a motion for summary judgment, the Court begins with these basic principles. The Federal Rules of Civil Procedure grant this Court authority under Rule 56 to render "judgment as a matter of law" to a party who moves for summary judgment. "[S]ummary judgment is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. . . .'" Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56(c)).

The Court must view the evidence produced by "the nonmoving

inmates, "is not entitled to qualified immunity...."); Swann v. Southern Health Partners, Inc., 388 F.3d 834, 837(11th Cir. 2004) ("The parties agree that as a private entity, SHP [a private corporation under contract with the County to provide medical care to inmates at the county jail] is not entitled to assert a qualified immunity defense."); Hinson v. Edmond, 205 F.3d 1264, 1265 (11th Cir. 2000) (a "privately employed prison physician" "is ineligible to advance the defense of qualified immunity").

party, and all factual inferences arising from it, in the light most favorable to" that party. Barfield v. Brierton, 883 F.2d 923, 934 (11th Cir. 1989). However, Rule 56(e) states that:

an adverse party [to a motion for summary judgment] may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Fed. R. Civ. P. 56(e); see also Celotex Corp., 477 U.S. at 325-27. "[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. . . . If the evidence is merely colorable, . . . or is not significantly probative, . . . summary judgment may be granted." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986) (internal citations omitted). "Summary judgment may be granted against a party who fails to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial." Liberty Mut. Fire Ins. Co. v. Sahawneh, 2001 WL 530424, *1 (S.D. Ala. May 11, 2001) (unreported) (citing Anderson, 477 U.S. at 249-50).

IV. DISCUSSION

In this action, Plaintiff seeks redress for an alleged constitutional deprivation pursuant to 42 U.S.C. § 1983. The

Court construes Plaintiff's Complaint against Defendants as asserting a violation of his rights under the Eighth Amendment for Defendants' failure to properly treat his psychiatric condition while he was incarcerated at the Mobile County Metro Jail. For the reasons set forth below, the Court finds that Plaintiff's allegations fail to establish any constitutional violation by Defendants. Thus, it is recommended that Defendants' motion for summary judgment be granted.

Denial of Adequate Medical Care

In this action, Plaintiff alleges that Defendants violated his rights under the Eighth Amendment by failing to properly treat his psychiatric condition during his incarceration at the Mobile County Metro Jail. Specifically, Plaintiff alleges that Dr. Smith, the jail psychiatrist, prescribed various medications for Plaintiff's "psychosis" over a two-year period of time, but none of them worked. (Doc. 1 at 5; Doc. 39 at 2). Dr. Smith did not prescribe Plaintiff the medication that Plaintiff had taken while under the care of the previous medical services provider for the jail. (Id.). When Dr. Smith's repeated attempts to treat Plaintiff's hallucinations failed, Plaintiff claims that Dr. Smith "threw up his hands" and told Plaintiff that he was going to have to "learn to deal with it." (Doc. 39 at 2).

The Eighth Amendment provides that, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and

unusual punishments inflicted." U.S. Const. amend. VIII. "The Eighth Amendment's proscription of cruel and unusual punishments prohibits prison officials from exhibiting deliberate indifference to prisoners' serious medical needs." Campbell v. Sikes, 169 F.3d 1353, 1363 (11th Cir. 1999) (citing Estelle v. Gamble, 429 U.S. 97, 104 (1976)). In Sims v. Mashburn, 25 F.3d 980 (11th Cir. 1994), the Eleventh Circuit delineated the objective and subjective portions of an Eighth Amendment claim as follows:

An Eighth Amendment claim is said to have two components, an objective component, which inquires whether the alleged wrongdoing was objectively harmful enough to establish a constitutional violation, and a subjective component, which inquires whether the officials acted with a sufficiently culpable state of mind.

Sims, 25 F.3d at 983 (citing Hudson v. McMillian, 503 U.S. 1, 8 (1992)).

To meet the objective element required to demonstrate a denial of medical care in violation of the Eighth Amendment, a plaintiff first must demonstrate the existence of an "objectively serious medical need." Farrow v. West, 320 F.3d 1235, 1243 (11th Cir. 2003). A serious medical need is "'one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.'" Id. (quoting Hill v. Dekalb Reg'l Youth Det. Ctr., 40 F.3d 1176, 1187 (11th Cir.

1994)). "In either of these situations, the medical need must be one that, if left unattended, pos[es] a substantial risk of serious harm." Id. (internal quotation marks and citation omitted).

Further, in order to meet the subjective requirement of an Eighth Amendment denial of medical care claim, Plaintiff must demonstrate "deliberate indifference" to a serious medical need. Farrow, 320 F.3d at 1243.

In Estelle, the Supreme Court established that "deliberate indifference" entails more than mere negligence. Estelle, 429 U.S. at 106, 97 S. Ct. 285; Farmer, 511 U.S. at 835, 114 S. Ct. 1970. The Supreme Court clarified the "deliberate indifference" standard in Farmer by holding that a prison official cannot be found deliberately indifferent under the Eighth Amendment "unless the official *knows of and disregards an excessive risk to inmate health or safety*; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer, 511 U.S. at 837, 114 S. Ct. 1970 (emphasis added). In interpreting Farmer and Estelle, this Court explained in McElligott that "deliberate indifference has three components: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence." McElligott, 182 F.3d at 1255; Taylor, 221 F.3d at 1258 (stating that defendant must have subjective awareness of an "objectively serious need" and that his response must constitute "an objectively insufficient response to that need").

Farrow, 320 F.3d at 1245-46.

Assuming, without deciding, that Plaintiff's psychiatric condition was a serious medical need requiring medical treatment, thus satisfying the objective component of his Eighth Amendment claim, Plaintiff nevertheless must establish the subjective component of his claim. This Plaintiff has failed to do.

Plaintiff complains that, after June 1, 2004, when CMS and Dr. Smith began providing medical services to the inmates incarcerated at the Mobile County Metro Jail, he never again received the proper medication for his psychiatric problems. (Doc. 1 at 4-5; Doc. 39 at 1-2). Plaintiff states that he suffered from depression and hallucinations at various times throughout his two-year incarceration at the Metro Jail, which Dr. Smith treated with a variety of drugs, none of which worked. (Id.; Doc. 24, Ex. 1 at 3, 11; Doc. 24, Ex. 2 at 10-11, 28, 30-31). Plaintiff's medical records confirm that Dr. Smith saw Plaintiff regularly throughout his incarceration and treated him for depression and hallucinations. Plaintiff's medical records from August, 2004, through November, 2005, reflect at least twelve examinations by Dr. Smith, during which time Dr. Smith prescribed, alternately, Amitriptyline, Haldol, Geodon, and, again, Amitriptyline, attempting to find an effective medication for Plaintiff's depression and hallucinations that Plaintiff could tolerate. (Doc. 24, Ex. 1 and Ex. 2). Dr. Smith indicated in his notes that he had doubts about Plaintiff's claims of

seeing visions and hearing voices, but he nonetheless attempted to treat the reported episodes with the antipsychotic medications, Haldol and Geodon. (Doc. 24, Ex. 2 at 27, 32). Dr. Smith discontinued Haldol and Geodon after Plaintiff suffered severe adverse reactions to the medications, and he reordered Amitriptyline, an antidepressant. (Id., Ex. 1 at 8; Ex. 2 at 5, 20-31, 34). Dr. Smith indicated that he considered Amitriptyline to be the most stable course of treatment for Plaintiff over time, and he noted improvement in Plaintiff's condition through his course of treatment with Amitriptyline.⁴ (Id., Ex. 2 at 25, 27).

In order to satisfy the subjective element of an Eighth Amendment claim, Plaintiff must show that Defendants knew of and disregarded "an excessive risk to [his] health or safety." Farrow, 320 F.3d at 1245. Stated differently, Plaintiff must show that Defendants had "subjective knowledge of a risk of serious harm," that Defendants disregarded that risk, and that Defendants did so "by conduct that is more than mere negligence." Id. The record is devoid of evidence that Defendants had subjective knowledge of, and disregarded, a risk of serious harm

⁴The record does not contain Plaintiff's medical records from January, 2006, when Defendants filed their evidentiary submission, to August, 2006, when Plaintiff was transferred out of the Metro Jail. However, Plaintiff does not allege that his course of treatment changed during that time. (Doc. 39).

to Plaintiff from his psychiatric condition. To the contrary, the record shows that Dr. Smith regularly monitored and treated Plaintiff with various psychiatric medications for his depression and hallucinations. Despite Plaintiff's allegations that Dr. Smith simply "threw up his hands" and suggested that Plaintiff "learn to deal with it," (Doc. 39 at 2), there is no evidence that Dr. Smith ever stopped treating Plaintiff's illness or ever stopped trying to improve Plaintiff's condition.

The Eleventh Circuit has recognized that "when a prison inmate has received medical care, courts hesitate to find an Eighth Amendment violation." Waldrop v. Evans, 871 F.2d 1030, 1035 (11th Cir. 1989). The fact that a Plaintiff may disagree with the efficacy of the treatment recommended or simply prefer a different course of treatment does not state a valid claim of medical mistreatment under the Eighth Amendment. See, e.g., Adams v. Poag, 61 F.3d 1537, 1545 (11th Cir. 1995) ("the question of whether governmental actors should have employed additional diagnostic techniques or forms of treatment 'is a classic example of a matter for medical judgment' and therefore not an appropriate basis for grounding liability under the Eighth Amendment.") (quoting Estelle, 429 U.S. at 107); Del Muro v. Federal Bureau of Prisons, 2004 WL 1542216, *4 (N.D. Tex. 2004) (unpublished) ("It is well-established that a difference in opinion or a disagreement between an inmate and prison officials

as to what medical care is appropriate for his particular condition does not state a claim for deliberate indifference to medical needs.").

Moreover, even if the Court were to assume that Dr. Smith had incorrectly diagnosed or treated Plaintiff, such as by failing to prescribe the medication sought by Plaintiff, Eighth Amendment liability cannot be grounded on "mere negligence." Farrow, 320 F.3d at 1245. It is well established that "[s]imple medical malpractice . . . does not rise to the level of a constitutional violation." Waldrop, 871 F.2d at 1035.

Inasmuch as Plaintiff's own medical records establish that he received extensive medical treatment for his psychiatric problems, Plaintiff has failed to meet the subjective element of "deliberate indifference" necessary to constitute an Eighth Amendment violation. Thus, Defendants are entitled to summary judgment on Plaintiff's Eighth Amendment claim.

V. CONCLUSION

Based on the foregoing, it is recommended that the motion for summary judgment of Defendants, Correctional Medical Services, Inc., and Charles J. Smith, M.D. (Docs. 16, 18, 24), be granted and that Plaintiff's action against these Defendants be dismissed with prejudice.⁵

⁵ On March 1, 2007, the Court denied Defendants' motion to strike Plaintiff's evidentiary submission, stating that the Court

MAGISTRATE JUDGE'S EXPLANATION OF PROCEDURAL RIGHTS
AND RESPONSIBILITIES FOLLOWING RECOMMENDATION
AND FINDINGS CONCERNING NEED FOR TRANSCRIPT

1. Objection. Any party who objects to this recommendation or anything in it must, within ten days of the date of service of this document, file specific written objections with the clerk of court. Failure to do so will bar a *de novo* determination by the district judge of anything in the recommendation and will bar an attack, on appeal, of the factual findings of the magistrate judge. See 28 U.S.C. § 636(b)(1)(C); Lewis v. Smith, 855 F.2d 736, 738 (11th Cir. 1988); Nettles v. Wainwright, 677 F.2d 404 (5th Cir. Unit B, 1982)(*en banc*). The procedure for challenging the findings and recommendations of the magistrate judge is set out in more detail in SD ALA LR 72.4 (June 1, 1997), which provides that:

A party may object to a recommendation entered by a magistrate judge in a dispositive matter, that is, a matter excepted by 28 U.S.C. § 636(b)(1)(A), by filing a "Statement of Objection to Magistrate Judge's Recommendation" within ten days after being served with a copy of the recommendation, unless a different time is established by order. The statement of objection shall specify those portions of the recommendation to which objection is made and the basis for the objection. The objecting party shall submit to the district judge, at the time of filing the objection, a brief setting forth the party's arguments that the magistrate judge's recommendation should be reviewed *de novo* and a different disposition made. It is insufficient to submit only a copy of the original brief submitted to the magistrate judge, although a copy of the original brief may be submitted or referred to and incorporated into the brief in support of the objection. Failure to submit a brief in support of the objection may be deemed an abandonment of the objection.

A magistrate judge's recommendation cannot be appealed to a Court of Appeals; only the district judge's order or judgment can

would reconsider the motion when it ruled on the motion for summary judgment. (Doc. 42). Assuming the allegations of Plaintiff's evidentiary submission as true, they still fail to establish the subjective element of Plaintiff's Eighth Amendment claim. Therefore, any further consideration of this issue is unnecessary.

be appealed.

2. Transcript (applicable where proceedings tape recorded). Pursuant to 28 U.S.C. § 1915 and Fed. R. Civ. P. 72(b), the magistrate judge finds that the tapes and original records in this action are adequate for purposes of review. Any party planning to object to this recommendation, but unable to pay the fee for a transcript, is advised that a judicial determination that transcription is necessary is required before the United States will pay the cost of the transcript.

DONE this 19th day of March, 2007.

s/BERT W. MILLING, JR.
UNITED STATES MAGISTRATE JUDGE